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# Philosophy's Practical Turn

Kevin P. Tobia\*

Has modern philosophy taken a “practical turn?” If such a turn requires the *first* emphasis on practicality, then probably not. Prior philosophy has not discarded or neglected practicality. But a “turn” might instead be understood as a profound transformation.<sup>1</sup> Even if philosophy’s practical concern is not new, perhaps its targets, methods, or character have changed significantly.

Only time will tell whether this modern moment signifies a transformation in practical philosophy. The purpose of this introduction is simply to suggest that, insofar as practical philosophy continues or transforms, a particular subset of work deserves attention: practical *legal* philosophy. The purpose of this journal symposium is to feature that work.

The atmosphere in some corners of contemporary philosophy suggests something like a practical turn, or at least practical transformation. Philosophy seems to be broadening, and this expansion provides room for practical concerns once prohibited.<sup>2</sup> Moreover, longstanding philosophical areas—for example, ethics and epistemology—witness a shift in practical emphasis. There is also a growing appreciation of the value of public philosophy, argument made less esoteric and more impactful.

These developments and impressions do not mark a “turn” in the sense of turning *from* former non-practicality, since philosophy has long addressed practical issues. The eighteenth and nineteenth centuries saw

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1. So-called “turns” occur within philosophy, law, and other disciplines. *See, e.g.,* THE LINGUISTIC TURN: ESSAYS IN PHILOSOPHICAL METHOD, (Richard Rorty ed., 1992); RICHARD J. BERNSTEIN, THE PRAGMATIC TURN (2010); Charles L. Barzun, *The Positive U-Turn*, STAN. L. REV. 1323 (2017); Pascal Borry, Paul Schotsmans & Kris Dierickx, *The Birth of the Empirical Turn in Bioethics*, 19 BIOETHICS 49 (2005); Michael Freedman, *Editorial: The ‘Political Turn’ in Political Theory*, 19 J. POL. THEORY 1 (2014).

2. Notably, the modern expansion includes increasingly broader recognition of often-neglected philosophical areas. Among others, these include African/a, African-American, and Caribbean philosophy; Arabic and Islamic philosophy; Asian and Asian-American philosophy; Feminist philosophy; Indigenous philosophy; Latin American philosophy; LGBTQ philosophy; philosophy of disability; philosophy of gender and sexuality; and philosophy of race. It is not the case that every project in each of these areas is “practical” philosophy. However, the expansion of these areas and broader awareness of them only increases the amount of philosophy and thus the amount of practical philosophy.

Wollstonecraft and Mills' defenses of women's rights.<sup>3</sup> The 1970s marked a transformative growth of philosophical bioethics.<sup>4</sup> Significant examples abound before and after these dates. Others will be recognized retrospectively as we continue to expand the "philosophical cannon."<sup>5</sup>

Nevertheless, there is a recent sense of growing focus on practicality. Our time also marks a moment of tremendous practical philosophical outlets such as Giving What We Can, and Effective Altruism more broadly.<sup>6</sup> Despite important debates about the theory, ambitions, and methods of those organizations,<sup>7</sup> their status as novel and notable practical-philosophical vehicles is undeniable.

Whether history will reveal philosophy's current practicality as a speedbump or U-turn, philosophy's practical projects are intriguing from our modern vantage point. One subset of these projects is especially remarkable and worth continued attention. We can call these projects "philosophy in service of practicality," or "*philosophy for practicality*." These are projects that attempt to make progress on practical problems by using the tools of philosophy.

To clarify the significance of this type of project, consider its foil: practicality in service of philosophy, or *practicality for philosophy*. Included in that set of projects are those that employ practical issues to illuminate philosophical debates. For example, one might argue that some philosophical view has practical consequences that provide reasons against the philosophical view. Where philosophy for practicality generally starts with the practical issue, practicality for philosophy typically begins with a more traditional philosophical debate.

To be sure, many projects fall between the poles of these categories. However, philosophy for practicality is an especially valuable enterprise—and one that should not be neglected. For one, scores of extant real issues could benefit from rich philosophical analysis. Moreover, neglect or disrespect of "philosophy for practicality" can be self-reinforcing. When these projects are dismissed for their non-philosophical subject matter, this further rigidifies the boundary between appropriate and inappropriate domains of philosophical inquiry.

This is not to say that we should abolish or even deemphasize practicality for philosophy. These projects have value and are worth

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3. MARY WOLLSTONECRAFT, A VINDICATION OF THE RIGHTS OF WOMAN: WITH STRICTURES AND MORAL SUBJECTS (1792); see also JOHN STUART MILL, THE SUBJECTION OF WOMEN (1869).

4. See, e.g., *The Belmont Report*, NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH (Apr. 18, 1979); see also PETER SINGER, ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS (1975).

5. See, e.g., THE NEGLECTED CANON: NINE WOMEN PHILOSOPHERS: FIRST TO THE TWENTIETH CENTURY (T. Dykeman ed., 1999); see also AFRICA, ASIA, AND THE HISTORY OF PHILOSOPHY: RACISM IN THE FORMATION OF THE PHILOSOPHICAL CANON, 1780-1830 (P.K. Park ed., 2013).

6. See generally PETER SINGER, THE MOST GOOD YOU CAN DO: HOW EFFECTIVE ALTRUISM IS CHANGING IDEAS ABOUT LIVING ETHICALLY (2015); WILLIAM MACASKILL, DOING GOOD BETTER: EFFECTIVE ALTRUISM AND A RADICAL NEW WAY TO MAKE A DIFFERENCE (2015).

7. See, e.g., Jason Gabriel, *Effective Altruism and its Critics*, 34 J. APPLIED PHIL. 457 (2017).

attention and engagement. But such projects also have common pitfalls. Practicality for philosophy is often fought on philosophy's turf. The transmutation of real-world problems into problems on the standard philosophical terrain can reduce or eliminate the projects' practical import. In the worst case, such "practical philosophy" parades under the guise of pragmatic engagement by simply snatching up real-world concerns as new fodder for old philosophical games. Such projects are particularly susceptible to charges of moral grandstanding.<sup>8</sup>

A classic example of this problem is the use of practical considerations as tiebreakers, reasons, or considerations in favor of some established philosophical theory. Why should we be externalists about justification? Because it supports radical feminism. Why should we be Rule Consequentialists? Because it supports queer causes. These argument forms are certainly legitimate, but their conclusions can have little practical significance. Often, the important practical values or standpoints are *assumed*. Anyone not already committed to radical feminism or queer rights is unlikely to be persuaded of those causes on the basis of philosophical theory. At stake are questions of philosophical debates, and any practicality is easily misunderstood as mere expressive signaling. And sometimes the apparent practicality just *is* mere expressive signaling.

This approach of practicality for philosophy may be more comfortable than philosophy for practicality. The latter is more daunting. It requires intellectual humility and the recognition that the philosopher has ventured into unfamiliar territory, the world of the practical concern itself.

Philosophy for practicality requires not only recognition of the limits of philosophical expertise, but also the acknowledgment that philosophy is one tool among many and one most effectively coupled with knowledge of the real conditions of society. Doing philosophy for practicality demands recognizing the practical issue on its own terms, aware that philosophical tools or theories may not be effective at all.

The law is one domain that benefits from philosophy for practicality. There are numerous ways in which philosophy contributes to legal studies. But to be most effective, philosophers must play by the rules of this different game—engaging with the law and relevant facts on their own terms. Of course, notable successes can involve shifting the rules or conceptual landscape; consider for example, MacKinnon's rich development of sexual harassment.<sup>9</sup> But even those projects require an understanding of the facts and extant landscape—the conditions of the society over which the practical philosophy operates. This kind of practical philosopher cannot proceed in isolation. Philosophy in service of

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8. See generally Justin Tosi & Brandon Warmke, *Moral Grandstanding*, 44 PHIL. & PUB. AFF. 197 (2016).

9. CATHERINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

practicality requires engaging (perhaps “non-philosophically”) with the object of study and also the relevant other modes of inquiry, from law and history to statistics and sociology.

The essays featured here all display this virtue of practical philosophy. *Backpay for Exonerees* advances an innovative philosophical argument in support of backpay for the unjust punishment of exonerated people.<sup>10</sup> This argument is made all the more powerful by the essay’s thoughtful engagement with both the law and empirics to estimate the actual amount of backpay we ought to deliver. *Due Process Demands as Propaganda* takes aim at a popular objection to Title IX.<sup>11</sup> The Essay argues that “due process demands” can function as propaganda, employing insights from the philosophy of language to illuminate legal debates. *Welcoming Monsters: Disability as a Liminal Legal Concept* provides a primer on the philosophy of disability and its previous and possible contributions to the law.<sup>12</sup> This, too, serves as a model of philosophical work that is thoroughly engaged with its practical concern, drawing upon both philosophy and other relevant modes of inquiry. *Disentangling Perjury and Lying* rejects a common understanding that perjury and lying are inextricably connected.<sup>13</sup> By providing a rich analysis of perjury caselaw, the essay serves as a final example of philosophy engaging richly with its practical focus.

Whether or not philosophy is taking a practical turn, some historical lessons still bear on current (novel or traditional) practical efforts. Decades ago, Karl Llewellyn published his well-known essay “On Philosophy in American Law.”<sup>14</sup> Much has changed since its 1934 publication, but Llewellyn’s analysis still rings true. He concludes with comments on the historical development of “sociological jurisprudence.” To make sociological jurisprudence “*real* required more than armchair estimates. Pound and Frankfurter had indeed begun the work in the Cleveland crime survey. . . . To apply the criterion of judging law by its effects called for more exact knowledge both of what law was and of what its effects might be. Indeed it called for more accurate knowledge of the conditions of society.”<sup>15</sup>

To be sure, powerful practical philosophy does arise from the armchair. But the practicality of that work is enriched by engagement with empirical

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10. Erik Encarnacion, *Backpay for Exonerees*, 29 YALE J. L. & HUMAN. 245 (2017).

11. Annaleigh E. Curtis, *Due Process Demands as Propaganda*, 29 YALE J. L. & HUMAN. 273 (2017).

12. Jonas-Sébastien Beaudry, *Welcoming Monsters: Disability as a Liminal Legal Concept*, 29 YALE J. L. & HUMAN. 291 (2017).

13. Allison Douglass, Note, *Disentangling Perjury and Lying*, 29 YALE J. L. & HUMAN. 339 (2017).

14. Karl N. Llewellyn, *On Philosophy in American Law*, 82 U. PA. L. REV. 205 (1934). See generally ON PHILOSOPHY IN AMERICAN LAW (Francis J. Mootz III ed., 2009) (collection of modern essays on Llewellyn’s essay). This is an excellent collection of essays, which provides much inspiration for developing the field of practical legal philosophy.

15. Llewellyn, *supra* note 14, at 212.

work and a multitude of other disciplines. Practical (legal) philosophy should not be understood as mandating armchair abandonment. It's better understood as mandating a bigger bookcase and circle of interlocutors. Engage the facts, engage the law, and humbly recognize the relevance and insight of others' philosophy and especially apparent "non-philosophy." This is how to continue achieving *realness*—a necessary feature of philosophy in service of practicality.